

1-1 By: Harris, Armbrister, Lucio S.B. No. 1176  
1-2 (In the Senate - Filed March 11, 2003; March 19, 2003, read  
1-3 first time and referred to Committee on Business and Commerce;  
1-4 May 9, 2003, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 6, Nays 0; May 9, 2003, sent  
1-6 to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1176 By: Armbrister

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the regulation of roofing contractors; providing  
1-11 penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Title 7, Occupations Code, is amended by adding  
1-14 Subtitle D to read as follows:

1-15 SUBTITLE D. REGULATION OF CONSTRUCTION OF HOUSING AND BUILDINGS

1-16 CHAPTER 1251. ROOFING CONTRACTORS

1-17 SUBCHAPTER A. GENERAL PROVISIONS

1-18 Sec. 1251.001. DEFINITIONS. In this chapter:

1-19 (1) "Advisory board" means the Roofing Contractors  
1-20 Advisory Board.

1-21 (2) "Commercial roofing" means the exterior roof,  
1-22 cover, or skin of the roof assembly consisting of membrane, metal  
1-23 panels, sheets, shingles, tiles, slate, or other materials on any  
1-24 building or structure other than residential buildings or  
1-25 structures.

1-26 (3) "Commission" means the Texas Commission of  
1-27 Licensing and Regulation.

1-28 (4) "Department" means the Texas Department of  
1-29 Licensing and Regulation.

1-30 (5) "Executive director" means the executive director  
1-31 of the department.

1-32 (6) "Qualifying party" means an individual who  
1-33 possesses all the necessary qualifications for a license and who is  
1-34 a principal of a business entity licensed under this chapter.

1-35 (7) "Residential roofing" means any material applied  
1-36 to the exterior roof framing, whether of wood or steel, on a  
1-37 single-family home, duplex, triplex, or fourplex.

1-38 (8) "Roofing contracting" means performing or  
1-39 offering to perform the installation, construction, maintenance,  
1-40 service, repair, alteration, or modification of a roofing product  
1-41 or equipment in roofs.

1-42 Sec. 1251.002. EXEMPTIONS. (a) This chapter does not  
1-43 apply to a person:

1-44 (1) while the person performs roofing contracting:

1-45 (A) on new residential construction of a  
1-46 single-family home, duplex, triplex, or fourplex;

1-47 (B) under the direct supervision of an individual  
1-48 license holder;

1-49 (C) on property owned by the person and used as  
1-50 the person's residence;

1-51 (D) on a dwelling owned by a member of the  
1-52 person's family;

1-53 (E) on property that is primarily for  
1-54 agricultural use; or

1-55 (F) on property that is a portable building or a  
1-56 garage that is not connected to a dwelling;

1-57 (2) who is registered and regulated as a manufacturer,  
1-58 retailer, or installer under Chapter 1201 while the person performs  
1-59 roofing contracting in the building or installation of manufactured  
1-60 homes or in providing retailer or manufacturer warranty services  
1-61 free of charge to the consumer;

1-62 (3) who is a maintenance engineer while the person  
1-63 performs roofing contracting as an employee of the property owner,

2-1 the property lessee, or the management company managing the  
2-2 property where the roofing contracting is being performed;

2-3 (4) that qualifies for an exemption from federal  
2-4 income taxation under Section 501(a) of the Internal Revenue Code  
2-5 of 1986 by being listed as an exempt organization in Section  
2-6 501(c)(3) of that code; or

2-7 (5) who collects less than \$250,000 in revenues from  
2-8 commercial or residential roofing in one calendar year as  
2-9 determined by the department.

2-10 (b) This chapter does not restrict the practice of  
2-11 architecture or engineering by a person licensed in this state to  
2-12 practice that profession.

2-13 [Sections 1251.003-1251.050 reserved for expansion]

2-14 SUBCHAPTER B. DEPARTMENT POWERS AND DUTIES

2-15 Sec. 1251.051. ADMINISTRATION; ENFORCEMENT; FEES.

2-16 (a) The department shall administer this chapter.

2-17 (b) The department may contract with another state agency or  
2-18 with a political subdivision of the state for the enforcement of  
2-19 this chapter and the rules adopted and orders issued under this  
2-20 chapter.

2-21 (c) The commission may set fees in amounts reasonable and  
2-22 necessary to recover the costs of administering this chapter,  
2-23 including fees for administration of continuing education courses,  
2-24 examinations, and issuance of licenses, including renewals and  
2-25 temporary licenses.

2-26 Sec. 1251.052. RULES; STANDARDS. (a) The department may  
2-27 adopt rules to enforce this chapter.

2-28 (b) The department shall adopt rules for the practice of  
2-29 roofing contracting consistent with this chapter. The standards  
2-30 prescribed by rule must be substantially the same as the standards  
2-31 set forth in the roofing manufacturers' standard requirements.

2-32 Sec. 1251.053. FORMS. The department shall prescribe  
2-33 application forms for original and renewal licenses and shall  
2-34 design the licenses.

2-35 Sec. 1251.054. ON-LINE DIRECTORY. (a) The department  
2-36 shall make available on-line a directory of persons licensed under  
2-37 this chapter.

2-38 (b) The department may not charge for access to the on-line  
2-39 directory.

2-40 Sec. 1251.055. CONSUMER COMPLAINT INVESTIGATION. (a) The  
2-41 department shall investigate consumer complaints filed with the  
2-42 department. If the department determines after investigation that  
2-43 a license holder has violated this chapter or a rule adopted under  
2-44 this chapter, the department may take appropriate action under  
2-45 Subchapter F.

2-46 (b) The department shall maintain a file on each written  
2-47 complaint filed with the department. The file must include:

2-48 (1) the name of the person who filed the complaint;  
2-49 (2) the date the complaint is received by the  
2-50 department;

2-51 (3) the subject matter of the complaint;  
2-52 (4) the name of each person contacted in relation to  
2-53 the complaint;

2-54 (5) a summary of the results of the review or  
2-55 investigation of the complaint; and

2-56 (6) an explanation of the reason the file was closed,  
2-57 if the department closed the file without taking action other than  
2-58 to investigate the complaint.

2-59 (c) The department shall provide to the person filing the  
2-60 complaint and to each person who is a subject of the complaint a  
2-61 written summary of the department's policies and procedures  
2-62 relating to complaint investigation and resolution. The department  
2-63 shall make the summary available on the department's Internet site.

2-64 (d) The department, at least quarterly until final  
2-65 disposition of the complaint, shall notify the person filing the  
2-66 complaint and each person who is a subject of the complaint of the  
2-67 status of the investigation unless the notice would jeopardize an  
2-68 undercover investigation.

2-69 [Sections 1251.056-1251.100 reserved for expansion]

SUBCHAPTER C. ADVISORY BOARD

Sec. 1251.101. ADVISORY BOARD. (a) The Roofing Contractors Advisory Board is created to advise the department in:

- (1) adopting rules;
- (2) enforcing and administering this chapter; and
- (3) determining the content of examinations.

(b) The advisory board shall advise the commission in setting fees.

Sec. 1251.102. COMPOSITION. (a) The advisory board is composed of six members appointed by the presiding officer of the commission, with the commission's approval.

(b) The executive director or the executive director's designee shall serve as an ex officio, nonvoting member of the advisory board.

Sec. 1251.103. APPOINTMENT. The presiding officer of the commission shall appoint the advisory board members as follows:

(1) three members must be full-time licensed roofing contractors with at least 10 years' experience in roofing contracting and must hold the following licenses:

- (A) one member must hold a commercial license;
- (B) one member must hold a residential license;

and

(C) one member must hold a commercial and a residential license; and

(2) three members must be public representatives.

Sec. 1251.104. TERM. Members of the advisory board hold office for staggered terms of six years, with two terms expiring on February 1 of each odd-numbered year.

Sec. 1251.105. PRESIDING OFFICER. The presiding officer of the commission, with the commission's approval, shall designate a member of the advisory board to serve as presiding officer of the advisory board.

Sec. 1251.106. VACANCIES. If a vacancy occurs on the advisory board, the presiding officer of the commission, with the commission's approval, shall appoint a member who represents the same interests as the former member to serve the unexpired term.

Sec. 1251.107. MEETINGS. The advisory board shall meet at least once every six months and may meet at other times at the call of the presiding officer of the commission.

Sec. 1251.108. VOTES. A decision of the advisory board is not effective unless it receives the affirmative vote of at least a majority of the members present.

Sec. 1251.109. COMPENSATION NOT ALLOWED. An advisory board member serves without compensation.

[Sections 1251.110-1251.150 reserved for expansion]

SUBCHAPTER D. LICENSE REQUIREMENTS

Sec. 1251.151. LICENSE REQUIRED; CITATION. (a) Unless exempted under Section 1251.002, a person may not perform roofing contracting without a license issued under this chapter.

(b) A business entity that holds a license must have at least one qualifying party.

(c) The license holder and the license holder's qualifying party shall comply with the requirements of this chapter.

(d) The commission or a municipal official may issue a citation to a person who performs roofing contracting without a license issued under this chapter.

Sec. 1251.152. SCOPE OF LICENSE. A license is valid throughout this state, and the license holder is not required to hold a municipal license or certificate to practice roofing contracting in any municipality in this state.

Sec. 1251.153. ROOFING CONTRACTOR LICENSE CLASSES. Roofing contractor licenses are as follows:

(1) a Class I license entitles the license holder to perform commercial and residential roofing services;

(2) a Class II license entitles the license holder to perform only commercial roofing services; and

(3) a Class III license entitles the license holder to perform only residential roofing services.

Sec. 1251.154. APPLICATION; ELIGIBILITY. (a) A license

4-1 application must be made on a form prescribed by the department and  
4-2 must specify the class of license the applicant seeks.

4-3 (b) To be eligible for a license, the qualifying party must  
4-4 be at least 18 years old and must present to the department  
4-5 satisfactory evidence of at least three years of practical  
4-6 experience in roofing contracting in the previous five years.

4-7 (c) The qualifying party's application must be accompanied  
4-8 by:

4-9 (1) a statement of the applicant's practical  
4-10 experience;

4-11 (2) evidence of the insurance coverage required under  
4-12 this chapter;

4-13 (3) the application fee; and

4-14 (4) the examination fee.

4-15 Sec. 1251.155. EXAMINATIONS. (a) The department shall  
4-16 prescribe the method and content of examinations administered under  
4-17 this chapter and shall set compliance requirements for the  
4-18 examinations. The examination shall be offered at least quarterly  
4-19 at various locations around the state as determined by the  
4-20 department.

4-21 (b) The department shall prescribe separate examinations  
4-22 for each class of license. For a Class I license, the department  
4-23 shall prescribe separate examinations for commercial and  
4-24 residential services.

4-25 (c) The qualifying party must pass the examination before a  
4-26 license may be issued.

4-27 (d) The qualifying party may retake the examination.

4-28 Sec. 1251.156. ISSUANCE; TERM. (a) The department shall  
4-29 issue a license to a person who qualifies for a license under this  
4-30 chapter.

4-31 (b) A license is valid for one year from the date of  
4-32 issuance.

4-33 Sec. 1251.157. RENEWAL; CONTINUING EDUCATION. (a) To  
4-34 renew a license, a qualifying party of the license holder must:

4-35 (1) complete eight hours of continuing education  
4-36 annually; and

4-37 (2) provide proof of maintenance of the insurance  
4-38 required by this chapter.

4-39 (b) The department shall recognize, prepare, or administer  
4-40 a continuing education program for the qualifying parties of  
4-41 license holders. The department may recognize a course offered by a  
4-42 trade association or other providers.

4-43 Sec. 1251.158. INSURANCE DISCLOSURE. A license holder who  
4-44 does not maintain general liability insurance coverage for work  
4-45 performed under this chapter must disclose that fact to each  
4-46 customer on a job in writing on a form prescribed by the department.  
4-47 The customer must sign the disclosure before the license holder may  
4-48 commence work for that customer.

4-49 Sec. 1251.159. USE, DISPLAY, AND ADVERTISEMENT OF LICENSE;  
4-50 RULES. With the advice of the advisory board, the department shall  
4-51 adopt rules relating to the use, display, and advertisement of a  
4-52 license issued under this chapter.

4-53 Sec. 1251.160. DISPOSAL OF ROOFING MATERIALS; RULES. The  
4-54 department shall adopt rules that require a license holder to  
4-55 obtain a permit from an approved landfill to dispose of roofing  
4-56 materials. The rules must include a requirement that a license  
4-57 holder maintain a record for each disposal of roofing materials by  
4-58 the license holder.

4-59 Sec. 1251.161. RECIPROCITY. The department may waive any  
4-60 prerequisite, except an insurance requirement, to obtaining a  
4-61 license for an applicant who holds a license issued by another  
4-62 jurisdiction with which this state has a reciprocity agreement.  
4-63 The commission may make an agreement, subject to the approval of the  
4-64 governor, with another state to allow for licensing by reciprocity.

4-65 Sec. 1251.162. TEMPORARY LICENSE. (a) The department may  
4-66 issue a temporary license to a license holder for a principal of a  
4-67 license holder to serve as that license holder's qualifying party  
4-68 if the original qualifying party for the license holder:

4-69 (1) becomes incapacitated and unable to serve in the

5-1 normal capacity of principal of the license holder; or  
5-2 (2) is no longer available due to the dissolution of a  
5-3 partnership, corporation, or other legal entity.

5-4 (b) The applicant for the temporary license shall apply to  
5-5 the department on a form prescribed by the department and pay the  
5-6 required fee.

5-7 (c) The temporary license is valid for 60 days beyond the  
5-8 date of the next examination or six months, whichever is less. The  
5-9 temporary license must be of the same class as the license being  
5-10 replaced.

5-11 [Sections 1251.163-1251.200 reserved for expansion]

5-12 SUBCHAPTER E. PROHIBITED ACTIVITIES

5-13 Sec. 1251.201. PROPER ROOFING INSTALLATION REQUIRED.

5-14 (a) In this section, "mechanical integrity" means physical  
5-15 installation of products, systems, or equipment in accordance with  
5-16 their intended purpose and according to industry standards at least  
5-17 as strict as the roofing manufacturers' specifications.

5-18 (b) The failure to provide proper installation consistent  
5-19 with the manufacturer's specifications or consistent with commonly  
5-20 accepted roofing practices, proper service, and mechanical  
5-21 integrity under this chapter violates this chapter.

5-22 Sec. 1251.202. MISREPRESENTATION OF ROOFING CONTRACTING  
5-23 SERVICES. An intentional or knowing misrepresentation of a  
5-24 necessary roofing contracting service, roofing contracting service  
5-25 to be provided, or a roofing contracting service that has been  
5-26 provided, violates this chapter.

5-27 Sec. 1251.203. CERTAIN ADVERTISING PROHIBITED. A person  
5-28 may not advertise to the public that the person is engaged in the  
5-29 business of roofing contracting unless the person holds a license  
5-30 issued under this chapter.

5-31 [Sections 1251.204-1251.250 reserved for expansion]

5-32 SUBCHAPTER F. PENALTIES AND ENFORCEMENT

5-33 Sec. 1251.251. DENIAL, SUSPENSION, OR REVOCATION OF  
5-34 CERTIFICATE. (a) A violation of this chapter, a rule adopted  
5-35 under this chapter, or an order issued under this chapter is a  
5-36 ground for the denial, suspension, or revocation of a license and a  
5-37 ground for the imposition of an administrative penalty under  
5-38 Subchapter F, Chapter 51.

5-39 (b) The department may place on probation a person whose  
5-40 license is suspended. If a license suspension is probated, the  
5-41 department may require the person to:

5-42 (1) report regularly to the department on matters that  
5-43 are the basis of the probation;

5-44 (2) limit practice to the areas prescribed by the  
5-45 department; or

5-46 (3) continue or review professional education until  
5-47 the person or the person's qualifying party attains a degree of  
5-48 skill satisfactory to the department in those areas that are the  
5-49 basis of the probation.

5-50 Sec. 1251.252. EMERGENCY ORDERS. (a) The department may  
5-51 issue an emergency order as necessary to enforce this chapter if the  
5-52 department determines that an emergency exists or formerly existed  
5-53 requiring immediate temporary action to protect the public health  
5-54 and safety. The order may be issued without notice and hearing or  
5-55 with notice and hearing as the department considers practicable  
5-56 under the circumstances.

5-57 (b) If an emergency order is issued under this section  
5-58 without a hearing, the department shall set the time and place for a  
5-59 hearing to affirm, modify, or set aside the emergency order.

5-60 Sec. 1251.253. CEASE AND DESIST ORDERS. The department may  
5-61 issue a cease and desist order regarding a violation of this  
5-62 chapter.

5-63 Sec. 1251.254. MUNICIPAL REGULATION. (a) A municipality  
5-64 may by ordinance adopt and enforce standards for roofing  
5-65 contractors that are consistent with the standards established  
5-66 under this chapter.

5-67 (b) A municipality may not impose a license or registration  
5-68 fee on a roofing contractor licensed under this chapter.

5-69 (c) The municipality may report a violation of this chapter

6-1 to the commission. If the municipality elects to report the  
6-2 violation, it shall do so not later than the 10th day after the date  
6-3 on which it discovers the violation.

6-4 (d) Conviction of an offense under the municipal ordinance  
6-5 is a ground for the denial, suspension, or revocation of a license  
6-6 under Section 1251.251.

6-7 Sec. 1251.255. ENFORCEMENT OF CONTRACTS. (a) A person who  
6-8 performs roofing contracting without holding the appropriate  
6-9 license may not collect a fee or otherwise enforce a contract for  
6-10 the roofing service performed. To enforce a contract for the  
6-11 performance of roofing contracting, the person performing the  
6-12 service must present proof that the person held a license at the  
6-13 time the contract was signed and the work was performed.

6-14 (b) The department director shall adopt rules relating to  
6-15 the manner in which proof may be presented under this section.

6-16 SECTION 2. (a) The Texas Department of Licensing and  
6-17 Regulation shall issue a roofing contracting license under  
6-18 Subchapter D, Chapter 1251, Occupations Code, as added by this Act,  
6-19 without an examination for the qualifying party, if the qualifying  
6-20 party:

6-21 (1) provides proof satisfactory to the department that  
6-22 the qualifying party:

6-23 (A) has been engaged in the business of roofing  
6-24 contracting during the five years preceding the date of the license  
6-25 application; or

6-26 (B) is, on the effective date of this Act, a  
6-27 certified roofing contractor in good standing as tested and  
6-28 approved by a roofing trade association recognized by the  
6-29 department;

6-30 (2) applies to the executive director of the Texas  
6-31 Department of Licensing and Regulation not later than July 31,  
6-32 2004;

6-33 (3) pays the required fee; and  
6-34 (4) submits a copy of the contractor's certification  
6-35 that has been attested to by the trade association.

6-36 (b) The class of a license issued under this section is  
6-37 based on the classification of certification that is currently held  
6-38 by the contractor and must correspond as follows:

6-39 (1) a certified commercial and residential roofing  
6-40 contractor shall receive a Class I license;

6-41 (2) a certified commercial roofing contractor shall  
6-42 receive a Class II license; and

6-43 (3) a certified residential roofing contractor shall  
6-44 receive a Class III license.

6-45 (c) A person who is issued a license under this section and  
6-46 the qualifying party for that license holder are subject to all  
6-47 other provisions of Chapter 1251, Occupations Code, as added by  
6-48 this Act, including provisions for the renewal of the roofing  
6-49 contractor license.

6-50 SECTION 3. In making the initial appointments to the  
6-51 Roofing Contractors Advisory Board, the presiding officer of the  
6-52 Texas Commission of Licensing and Regulation, with the approval of  
6-53 the commission, shall designate two members for terms expiring on  
6-54 February 1, 2005, two members for terms expiring on February 1,  
6-55 2007, and two members for terms expiring on February 1, 2009. An  
6-56 initial board member appointed under Subdivision (1), Section  
6-57 1251.103, Occupations Code, as added by this Act, is not required to  
6-58 hold a license until September 1, 2004, but must be eligible to hold  
6-59 a license under Chapter 1251, Occupations Code, as added by this  
6-60 Act, as of the time of the initial appointment.

6-61 SECTION 4. (a) Except as provided by Subsection (b) of this  
6-62 section, this Act takes effect September 1, 2003.

6-63 (b) Section 1251.151 and Subchapters E and F, Chapter 1251,  
6-64 Occupations Code, as added by this Act, take effect September 1,  
6-65 2004.

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